

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-216

FIRESTONE TUBE COMPANY and
Gallagher Bassett Services Company
APPELLANTS

V.

RANDY GARRISON and Second Injury
Fund

APPELLEES

Opinion Delivered September 24, 2008

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F612744]

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellants argue that substantial evidence does not support the Arkansas Workers' Compensation Commission's decision that medical treatment for appellee Randy Garrison's right shoulder was reasonably necessary and that he was entitled to temporary total disability benefits. We affirm the Commission's decision.

An employer must promptly provide for an injured employee such medical and surgical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2007). What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Gansky v. Hi-Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996). On appeal, the evidence is viewed in the light most favorable to the Commission's decision, and the decision is affirmed if it is supported by substantial evidence. *Id.*

Garrison began working for appellant Firestone Tube Company in 1994, and he

underwent right-shoulder surgeries in 2004 and 2005. On October 3, 2006, Garrison filed a claim for benefits for a right-shoulder injury that occurred on June 2, 2006. According to Garrison, he was pulling a bale of rubber out of a shredder, when it “hung up” in the shredder. When he pulled it up, he heard a “pop” in his right shoulder. The injury was initially treated as compensable. On October 26, 2006, Garrison told his physician, Dr. Ben J. Kriesel, that physical therapy had not helped. On November 8, 2006, a claims specialist for appellant Gallagher Bassett Services Company notified Garrison that they had been informed that he had missed several doctor’s appointments, and having missed three visits, his benefits were terminated.

Dr. W. Scott Bowen treated Garrison and on December 19, 2006, recommended an arthroscopy because Garrison had become worse on physical therapy, this had been ongoing for a number of months, and Garrison had a specific re-injury in June. On January 17, 2007, surgery was performed on Garrison’s right shoulder. According to the post-operative report, appellant had an intact rotator cuff, synovitis with intact labrum type I abrasion of the superior labrum, mild external impingement, and acromioclavicular joint arthrosis. Dr. Bowen performed a right-shoulder arthroscopy, a labral debridement and synovectomy, an arthroscopic revision anterior acromioplasty, and an arthroscopic distal clavicle resection. A medical record dated January 22, 2007, indicated that Garrison was off work until released by his physician. On April 6, 2007, his treating physician wrote that he would reach maximum medical improvement in four weeks. Garrison testified that he was released on May 4, 2007. At the hearing, Garrison testified that after the surgery, he had no more pain and had the use

of his arm.

The Commission found that Garrison proved he was entitled to reasonably necessary medical treatment for his right shoulder. Appellants appeal that ruling, asserting that Garrison's shoulder surgery was not reasonably necessary. They note that Garrison did not seek medical treatment or report the injury for four months, and after the injury Garrison engaged in a number of strenuous activities requiring medical treatment. Also, they observe that a witness for appellants testified that during a doctor visit, Garrison was able to take off his long-sleeved tee-shirt without hesitation and in a fluid movement. They also note that Garrison missed six of nine physical therapy appointments. Further, they assert that the post-operative diagnosis was "nothing different that would be expected from a prior surgery on [Garrison's] right shoulder that was performed for a 2004 injury."

The Commission, however, specifically found credible Garrison's testimony that he felt a pop in his shoulder while performing employment services. The Commission also noted that Garrison had informed Dr. Kriesel and Dr. Bowen that physical therapy had not improved his condition. Further, the Commission noted that following surgery, Garrison regained full function of his right arm. We have previously concluded that post-surgical improvement is relevant in determining whether surgery is reasonably necessary. *Winslow v. D & B Mech. Contractors*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). Moreover, appellants do not cite to any medical records to support their observation that Garrison's post-operative diagnosis would have been what one expected from the 2004 surgery. Accordingly, we conclude that the Commission's decision is supported by substantial evidence.

Appellants further argue that substantial evidence does not support the award of temporary total disability benefits from January 17, 2007 to May 4, 2007. When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. *Luten v. Xpress Boats and Backtrack Trailers*, ___ Ark. App. ___, ___ S.W.3d ___ (June 18, 2008). The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended. *Id.* Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Id.* The determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. *Id.*

Here, the medical records indicate that Garrison's surgery was performed on January 17, 2007; that Garrison was off work until he was released; that his treating physician wrote on April 6, 2007, that Garrison would reach maximum medical improvement in four weeks; and that Garrison testified that he was released from his physician's care on May 4, 2007. This constitutes substantial evidence that he was entitled to temporary total disability benefits during that period.

Affirmed.

GRIFFEN and HUNT, JJ., agree.